

## Appendix F: Participant Rights

### Appendix F-1: Opportunity to Request a Fair Hearing

The State provides an opportunity to request a Fair Hearing under 42 CFR Part 431, Subpart E to individuals: (a) who are not given the choice of home and community-based services as an alternative to the institutional care specified in Item 1-F of the request; (b) are denied the service(s) of their choice or the provider(s) of their choice; or, (c) whose services are denied, suspended, reduced or terminated. The State provides notice of action as required in 42 CFR §431.210.

**Procedures for Offering Opportunity to Request a Fair Hearing.** Describe how the individual (or his/her legal representative) is informed of the opportunity to request a fair hearing under 42 CFR Part 431, Subpart E. Specify the notice(s) that are used to offer individuals the opportunity to request a Fair Hearing. State laws, regulations, policies and notices referenced in the description are available to CMS upon request through the operating or Medicaid agency.

The DDA informs the individual and his/her family or his/her legal representative of the opportunity to request a fair hearing by providing a written explanation of the right to appeal any adverse decision made by the DDA. This is done by mailing the individual a letter that includes a summary of DDA's decision, details of the basis of the determination, description of how to submit additional information for reconsideration, and explanation of the individual's right to request a Medicaid Fair Hearing ("an appeal") as explained in an enclosed notice. The Coordinator of Community Services (CCS) is copied on this letter to the individual. This letter is designed to be very understandable so that individuals and their families have a full understanding of their rights.

The two-page notice that is enclosed with this letter is titled, *Notice: Medicaid Fair Hearing* and describes how to request a hearing, the timeframe within which the hearing must be requested, what a Medicaid Fair Hearing is, and how to settle some (or all) of the issues in the appeal without having to go to hearing. Also attached to the letter is a pre-addressed *Hearing Request Form* that can be used to request a Medicaid Fair Hearing to contest the decision by the DDA.

This letter and two attachments are sent to individuals who are denied: 1) choice of HCBS waiver services as an alternative to institutional care, 2) the need for specific services, and 3) providers of their choice. When DDA notifies individuals that their services are suspended, reduced or terminated, DDA provides a letter along with a *Hearing Request Form* and the previously referenced, *Notice: Medicaid Fair Hearing*.

The Notice: Medicaid Fair Hearing advises the individual that further information about the Medicaid Fair Hearing can be found in the Code of Maryland Regulations (COMAR) 10.01.04 and 28.02.01 and in the Code of Federal Regulations (CFR) 42 CFR §431.200. Specifically, COMAR 10.01.04 (titled, *Fair Hearing Appeals Under the Maryland State Medical Assistance Program*) stipulates that the opportunity for Fair Hearing will be granted to individuals who are aggrieved by any Department or delegate agency policy, action or inaction which adversely affects the receipt, quality or conditions of Medical Assistance. Each waiver participant (and/or his/her family or guardian as appropriate) receives a copy of the notice of fair hearing in the initial waiver application upon enrollment.

If an individual requires assistance in pursuing a fair hearing, his or her Coordinator of Community Services will assist. Per DDA's policy, a CCS can provide the following assistance to an individual in the appeal process: 1. explain the appeal process to an individual, family, guardian, or authorized representative; 2. assist with the completion of the required forms for appealing a DDA determination; and 3. assist the individual in completing and sending a request for reconsideration.

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## Appendix F-2: Additional Dispute Resolution Process

- a. **Availability of Additional Dispute Resolution Process.** Indicate whether the State operates another dispute resolution process that offers participants the opportunity to appeal decisions that adversely affect their services while preserving their right to a Fair Hearing. *Select one:*

<input type="radio"/>	<b>No. This Appendix does not apply</b>
<input checked="" type="radio"/>	<b>Yes. The State operates an additional dispute resolution process</b>

- b. **Description of Additional Dispute Resolution Process.** Describe the additional dispute resolution process, including: (a) the State agency that operates the process; (b) the nature of the process (i.e., procedures and timeframes), including the types of disputes addressed through the process; and, (c) how the right to a Medicaid Fair Hearing is preserved when a participant elects to make use of the process: State laws, regulations, and policies referenced in the description are available to CMS upon request through the operating or Medicaid agency.

The DDA operates a dispute resolution process where the individual and his/her family and DDA engage in a Case Resolution Conference (CRC).

All individuals and their families are informed of the opportunity to engage in the CRC process when they receive a letter from DDA informing them of an adverse action pertaining to the waiver. The types of disputes addressed at a CRC may include dissatisfaction with a decision by DDA concerning eligibility, the individual's need for services, choice of service providers, and the denial, reduction, suspension, or termination of services.

Attached to the letter from DDA are two documents, *Notice: Medicaid Fair Hearing* and a *Hearing Request Form*. In addition to describing the Medicaid Fair Hearing process, the *Notice: Medicaid Fair Hearing* describes the CRC process and informs the individual of his opportunity to request a CRC. The *Hearing Request Form* includes a box to check if the individual wants to have a CRC as well as a Medicaid Fair Hearing.

A CRC provides an opportunity for an individual, his/her family, and representatives from the DDA to resolve a dispute before an individual's Medicaid Fair Hearing. A CRC is scheduled when an individual and his/her family has a disagreement with the DDA regarding an issue with waiver services. A CRC is scheduled when an individual has requested a Medicaid Fair Hearing.

### **What can be resolved at the CRC?**

Generally, discussion of the following areas may occur:

- a. The positions of the applicant and the DDA regional office, and the bases for them.

Often times, the applicant and his/her family do not understand why DDA denied the application. In some cases, simply explaining the reason is sufficient to resolve the case. In other cases, the applicant and his/her family may have information available that the regional office did not have when the decision was made. In these cases, that information may change the decision of the regional office. In other situations, the regional office may not have understood what the applicant and his/her family were asking for, or why the applicant and his/her family think he or she is eligible for services. Sometimes, having a moderator may help the applicant and his/her family explain these areas or clarify the request sufficiently to change the decision of the regional office.

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**b. Whether the information submitted is sufficient for the regional office to make a determination on the request.**

In some cases, the applicant and his/her family did not know what information should be presented with the application or request. In these cases, informing the applicant and his/her family of the types of documentation that DDA needs in order to make an informed decision can eliminate the need for a Medicaid Fair Hearing. Note that the regional office is not telling the applicant what information will result in an award of the services requested, but rather, what information must be presented in order for the regional office to adequately consider the request and make an informed decision. In these situations, the applicant and his/her family may have additional documentation that may change the decision of the regional office, or may wish additional time in order to have a required assessment performed. The applicant may decide to withdraw the request for a hearing, and submit a *Request for Reconsideration*. If the *Request for Reconsideration* is denied, the applicant will be entitled to a new hearing process.

**c. Whether the applicant and the regional office are correctly interpreting and applying statutes, regulations, and policies to the facts presented.**

In some cases, having the moderator explain to the applicant and his/her family the eligibility requirements, the statutes and the regulations that govern the service requested, or DDA's policy on a requested service, will suffice to resolve the case. The moderator can assist with ensuring that all relevant facts, law, criteria, and factors have been considered in making the decision.

**What is the overall structure of a CRC?**

The CRC typically lasts approximately one (1) hour and the overall structure of the CRC is as follows:

- a. The moderator introduces himself/herself and explains the process.
- b. The applicant/participant and his/her family have 10 minutes to explain the request, and why he or she thinks it should be granted.
- c. The DDA Regional Office representative has 10 minutes to explain why the request was denied.
- d. If the moderator thinks that the facts are not clear, or are misunderstood, he or she may ask that the parties discuss the facts at that time, so that everyone is working with the same set of facts. If this discussion resolves some or all of the disputes, the moderator reflects back the participants' areas of agreement and documents them.
- e. If there are disputes still remaining, the moderator may meet separately with the applicant/participant (and any representative) and with the Regional Office representative, in "separate sessions." In each of the separate sessions, the moderator may explain and discuss the law, regulations, and policies that apply to the services requested, and may discuss whether he/she believes that the facts meet the criteria and why. The other person(s) will also discuss why they believe the facts do or do not meet the criteria, and why. The moderator may ask the parties to consider other facts or policies, but the final decision on whether there is any agreement belongs to the DDA and the applicant/participant, rather than the moderator. Each separate session is limited to 10 minutes.

Nothing that is discussed in the separate sessions is revealed to the other side without the expressed approval of the parties in that session. This allows all parties to be completely open with their comments and questions, without concern that the other party will hear those comments and questions. Also, during the CRC, DDA regional office representatives may call or consult with their supervisors at any time to discuss any issue, and the moderator may call any DDA staff for clarification of policy or for any other purpose.

- f. In the remaining time, the parties meet together, with the moderator, to discuss whether their positions have changed and, if so, whether there are any issues that can be resolved. If there is resolution of part or all of the disputes, the moderator reflects back the areas of agreement and documents them. The parties sign the

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agreement. The moderator does not sign the agreement, since it is solely between the parties.

### Summary

All individuals and their families are informed of the opportunity to engage in the CRC process when they receive a letter from DDA informing them of an adverse action pertaining to the waiver. The CRC gives the individual, his/her family and the DDA an opportunity to discuss the dispute and get a better understanding of each other's position. Sometimes this discussion shows the DDA that they made an error, and DDA may then reverse the denial/adverse action. Other times, the individual and his/her family conclude that the decision made by DDA is a sound decision and they no longer want to appeal. In either of these cases, the individual and his/her family has the opportunity to withdraw his or her appeal (request for a Medicaid Fair Hearing) at the CRC.

Not all issues can or have to be resolved. If there is partial agreement, that agreement will be recorded and, if the case goes to the Medicaid Fair Hearing, only the remaining issues will need to be decided by the OAH. If there is no agreement, the individual and his/her family may proceed to his/her Medicaid Fair Hearing.

CRCs are scheduled by DDA's Operations Office. The Department grants one CRC to occur before an individual's Medicaid Fair Hearing. CRCs usually occur at one of DDA regional offices or other locations within a region. The Office of Administrative Hearings (OAH) schedules Medicaid Fair Hearings based on requirements in COMAR 10.01.04. Medicaid Fair Hearings occur at the OAH locations or locations convenient for participants, per OAH permission.

## Appendix F-3: State Grievance/Complaint System

### a. Operation of Grievance/Complaint System. *Select one:*

<input type="radio"/>	<b>No. This Appendix does not apply</b>
<input checked="" type="radio"/>	<b>Yes. The State operates a grievance/complaint system that affords participants the opportunity to register grievances or complaints concerning the provision of services under this waiver</b>

### b. Operational Responsibility. Specify the State agency that is responsible for the operation of the grievance/complaint system:

The DDA, Office of Health Care Quality (OHCQ) and SMA are responsible for the grievance and complaints system.

### c. Description of System. Describe the grievance/complaint system, including: (a) the types of grievances/complaints that participants may register; (b) the process and timelines for addressing grievances/complaints; and, (c) the mechanisms that are used to resolve grievances/complaints. State laws, regulations, and policies referenced in the description are available to CMS upon request through the Medicaid agency or the operating agency (if applicable).

DDA, Coordinators of Community Services, service providers and others make every effort to resolve issues/concerns for participants and families prior to accessing the formal process.

Formal Complaint Process: Complaints are categorized as a Type I incident under the Policy on Reportable Incidents and Investigation (PORII). Anyone can submit a complaint related to any aspect of the program including but not limited to administration, service delivery, and quality. As per the PORII, the Office of Health Care Quality (OHCQ) reviews and prioritizes reportable incidents as described in Appendices 1A-1G of the policy.

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Agency self-reported incidents and community complaints are reviewed within one working day of receipt by OHCQ and/or DDA staff to ensure that those incidents posing immediate jeopardy to the individual are immediately investigated. A triage unit staff reviews each report and notifies the DD Investigations Unit Manager (at OHCQ) or the QE Director (at DDA regional offices) of the need to evaluate the report for appropriate assignment based upon the severity and scope of the incident. The content of the report is evaluated to ensure the following information is included:

1. The individual is not in immediate danger;
2. When applicable, law enforcement and/or adult/child protective services have been contacted;
3. Staff suspected of abuse or neglect have been suspended from independent duty;
4. The individual has received needed intervention and health care;
5. Systemic and/or environmental issues have been identified and immediately handled.

If this information is not available in the report, triage staff call or correspond with the complainant to obtain the needed information to ensure that health, welfare and safety needs are being met. An inability to obtain this information from the complainant within a reasonable timeframe (generally no more than 48 hours of initial review of the report), will influence the decision to begin an on-site investigation or activity more quickly.

OHCQ staff meets to review self-reported Type 1 incidents or complaints, including those that may have been assigned on an emergency basis. The committee ensures a comprehensive review of reported incidents and community complaints has occurred. The committee takes into consideration the number and frequency of reportable incidents or complaints attributed to a provider agency, a participant, and other pertinent and available information to determine the immediate need for an on-site investigation.

In addition to the PORII, the general public may also file a complaint directly to the Regional Office, DDA Headquarters, or OHCQ by calling them directly or by written complaint via their website or downloading and printing the Complaint Report Form for submission to the OHCQ DD Unit.

The SMA will provide complainants, who call directly with information related to the formal OHCQ complaint process, submit a complaint on their behalf through the OHCQ website and/or contact DDA or OHCQ staff directly to discuss a case. The SMA may investigate serious complaints that are directly reported to the SMA.

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